

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DANIEL FELLNER,

Plaintiff,

- against -

TRAVEL 4 ALL SEASONS LLC

Defendant.

Docket No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Daniel Fellner (“Fellner” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Travel 4 All Seasons LLC (“Travel” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of copyrighted text about Pickleball on cruise ships, owned and registered by Fellner, a professional photographer and journalist. Accordingly, Fellner seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Arizona.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Fellner is a professional photographer and journalist in the business of licensing his photographs and articles to online and print media for a fee having a usual place of business at 3059 East Hazeltine Way, Chandler, AZ 85249.

6. Upon information and belief, Travel is a domestic limited liability company duly organized and existing under the laws of the State of Arizona, with a place of business 1228 E Country Crossing Way, Queen Creek, Arizona 85143. Upon information and belief Travel is registered with the Arizona Department of State Division of Corporations to do business in the State of Arizona. At all times material, hereto, Travel has owned and operated a website at the URL: www.Travel4AllSeasonsMagazine.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

7. Fellner wrote an article about Pickleball on cruise ships (the “Text”). A true and correct copy of the Text is attached hereto as Exhibit A.

8. Fellner is the author of the Text and has at all times been the sole owner of all right, title and interest in and to the Text, including the copyright thereto.

9. The Text was registered with the United States Copyright Office and was given registration number TX 8-559-608.

B. Defendant’s Infringing Activities

10. On or about April 5, 2018, Travel ran an article in the Website titled *Pickleball in Demand on Cruise ships!* See URL: <http://www.travel4allseasonsmagazine.com/2018/04/05/pickleball-on-cruise-ships/>. The article featured the Text. A true and correct copy of the article is attached hereto as Exhibit B.

11. Travel did not license the Photographs or the Text from Plaintiff for its article, nor did Travel have Plaintiff's permission or consent to publish the Text in its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Travel infringed Plaintiff's copyright in the Text by reproducing and publicly displaying the Text on the Website. Travel is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Text.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Text, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Travel be adjudged to have infringed upon Plaintiff's copyrights in the Text in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Text; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
March 13, 2019

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